

No. 18-1295

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

DYCORA TRANSITIONAL HEALTH & LIVING – VISALIA LLC,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITIONER’S STATEMENT OF ISSUES TO BE RAISED

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Attorneys for Petitioner
Dycora Transitional Health & Living –
Visalia LLC

Pursuant to this Court's Order of October 30, 2018, Petitioner Dycora Transitional Health & Living – Visalia LLC ("Dycora Visalia" or "Petitioner") hereby submits this Statement of Issues to be raised.

Petitioner expects to raise the following issues:

1. Whether the National Labor Relations Board ("NLRB") erred by finding Petitioner violated Sections 8(a)(5) and (1) of the National Labor Relations Act ("NLRA") by failing and refusing to recognize and bargain with the Service Employees International Union, Local 2015 ("Union"), and by failing to furnish the Union with certain requested information.

2. Whether the NLRB erred by finding or reaffirming that the Union is the valid, exclusive collective-bargaining representative of a certain unit of Licensed Vocational Nurses employed by Petitioner ("Unit"), or by otherwise failing to consider whether the Licensed Vocational Nurses were statutory supervisors under section 2(11) of the NLRA.

3. Whether the NLRB erred in failing to consider or decide whether the predecessor employer (to Petitioner) of the Unit was required to file a Request for Review to preserve the right to challenge the certification of the Unit in a later unfair labor practice proceeding, particularly where such predecessor consistently challenged the Unit's validity and never recognized or bargained with the Union.

4. Whether the NLRB erred by finding the Petitioner was precluded from litigating the appropriateness of the Unit under the NLRA because the Petitioner's predecessor did not file a Request for Review of the Unit's certification, even though the predecessor indicated its intent to test the Unit's certification.

5. Whether the NLRB erred by finding that the Petitioner was precluded from litigating the appropriateness of the Unit under the NLRA, where Petitioner was unable to litigate those issues because Petitioner was not the employer of the Unit at the time of certification or prior.

6. Whether the NLRB erred by concluding that the Petitioner's status as a successor employer did not constitute a special circumstance or status enabling the Petitioner to challenge the appropriateness of the Unit under the NLRA.

7. Whether the NLRB acted arbitrarily or otherwise erred by failing to consider the appropriateness of the Unit under the NLRA.

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Dated: November 29, 2018

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP

/s/ Ronald J. Holland

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CERTIFICATE OF SERVICE

I certify that I electronically filed a true, accurate and correct copy of the foregoing PETITIONER’S STATEMENT OF ISSUES TO BE RAISED with the United States Court of Appeals for the District Of Columbia Circuit on November 29, 2018 via the Court’s CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Ronald J. Holland

Ronald J. Holland

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Dycora Transitional Health & Living –

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